



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

C-570-011

Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement & Compliance, formerly Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: (Insert date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Justin Neuman or Milton Koch, Office VII,

AD/CVD Operations, Enforcement & Compliance, International Trade Administration, U.S.

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telephone; (202) 482-0486 or (202) 482-2584, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On December 31, 2013, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of certain crystalline silicon photovoltaic products (certain solar cells and panels) from the People's Republic of China (PRC), filed in proper form by SolarWorld Industries America, Inc. (Petitioner), a domestic producer of certain solar cells and panels. The CVD petition was accompanied by an antidumping duty (AD) petition concerning imports of certain solar cells and panels.¹ Between January 3 and January 9, 2014, the Department

¹ See "Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, As Amended," (December 31, 2013) (Petition).

requested additional information and clarification of certain areas of the Petition, and between January 7 and January 13, 2014, Petitioner filed a timely response to each request.²

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that producers/exporters of certain solar cells and panels in the PRC received countervailable subsidies under thirty-three programs within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because it is an interested party defined in section 771(9)(C) of the Act, and that Petitioner has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate (see “Determination of Industry Support for the Petition” below).

Period of Investigation

The period of investigation (POI) is January 1, 2012, through December 31, 2012, in accordance with 19 CFR 351.204(b)(2).

Scope of the Investigation

The products covered by this investigation are certain solar cells and panels the PRC.³

Comments on the Scope of the Investigation

During our review of the Petition, we solicited information from Petitioner to ensure that the proposed scope language is an accurate reflection of the products for which the domestic industry is seeking relief. Also, on January 15, 2014, Suniva, Inc. (Suniva), a U.S. producer of certain solar

² See Petitioner’s filings, “Supplement to the China CVD Petition,” (January 7, 2014) (China CVD Supplement); “General Issues Supplement to the Petition,” (January 9, 2014) (General Issues Supplement); and “Second General Issues Supplement to the Petition,” (January 13, 2014) (Second General Issues Supplement).

³ See Appendix I of this notice for a full description of the scope of this investigation.

cells and panels, submitted comments on the scope.⁴ Moreover, as discussed in the preamble to the Department's regulations,⁵ we are setting aside a period for interested parties to raise issues regarding product coverage. Parties should note that when considering product coverage with respect to this investigation, the Department will be informed by the product coverage decisions that it made in the investigations that resulted in the existing orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC.⁶ The Department encourages all interested parties to submit such comments by February 11, 2014, which is 20 calendar days from the signature date of this notice. All comments must be filed on the record of the CVD investigation, as well as the concurrent AD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 pm on the due date. Documents excepted from the electronic submission requirements must be filed manually (i.e., in paper form) with the Enforcement & Compliance's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the deadline established by the Department.⁷

⁴ See Letter from Suniva, "Request for Comment Period on Scope for Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China," (January 15, 2014).

⁵ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

⁶ The AD and CVD Orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC, cover modules, laminates, and panels produced in a third-country from cells produced in the PRC; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by the scope of the Orders.

⁷ See 19 CFR 351.303(b)(1). Information on help using IAACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on January 2, 2014, the Department invited representatives from the Government of China (GOC) for consultations with respect to the CVD Petition. Consultations were held with the GOC on January 10, 2014.⁸

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic

⁸ See Ex-Parte Memorandum to the File from Justin Neuman, International Trade Analyst, AD/CVD Operations, Office VII, Enforcement & Compliance, “Consultations with Officials from the Government of the People’s Republic of China Regarding the Countervailing Duty Petition Concerning Certain Crystalline Silicon Photovoltaic Products,” (January 13, 2014) (Consultations Memorandum).

like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,⁹ they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁰

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner offers a definition of the domestic like product that includes certain crystalline silicon photovoltaic cells and modules and notes that the like product definition in this proceeding is identical to the definition of the like product in the Department's and the ITC's investigation of crystalline silicon photovoltaic cells, whether or not assembled into modules, from China.¹¹ According to Petitioner, “{t}he definition of the domestic like product in the Petition differs only slightly from the proposed scope of the investigations....” and “slight differences in the definition of the domestic like product and the scope of an investigation are permissible under the statute....”¹² Based on our analysis of the information

⁹ See section 771(10) of the Act.

¹⁰ See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing Algoma Steel Corp., Ltd. v. United States, 688 F. Supp. 639, 644 (CIT 1988), aff'd 865 F.2d 240 (Fed. Cir. 1989)).

¹¹ See Volume I of the Petition, at 24; see, also General Issues Supplement, at Exhibit I-Supp-1; Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Antidumping Duty Investigation, 76 FR 70960, 70961 (November 16, 2011); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Countervailing Duty Investigation, 76 FR 70966, 70967-8 (November 16, 2011); and Crystalline Silicon Photovoltaic Cells and Modules from the People's Republic of China, Inv. Nos. 701-TA-481 and 731-TA-1190 (Final) USITC Pub. 4360 (December 2012), at 6-12.

¹² See General Issues Supplement, at 4.

submitted on the record, we have determined that certain crystalline silicon photovoltaic cells and modules constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.¹³

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the Petition. To establish industry support, Petitioner provided its own production of the domestic like product in 2012, and compared this to the estimated total production of the domestic like product for the entire domestic industry.¹⁴ Petitioner obtained total 2012 production of the domestic like product using data published by Solar Energy Industries Association/Greentech Media Research in U.S. Solar Market Insight 2012 Year in Review and other publicly available data.¹⁵ We have relied upon data Petitioner provided for purposes of measuring industry support.¹⁶

On January 10, 2014, in its consultations with the Department, the GOC raised the issue of industry support.¹⁷ On January 15, 2014, we received comments on industry support from Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., and Canadian Solar Inc. (collectively, PRC Producers/Exporters).¹⁸ Petitioner responded to the PRC Producers/Exporters' comments on January 15, 2014.¹⁹ PRC Producers/Exporters filed a rebuttal to

¹³ See Countervailing Duty Investigation Initiation Checklist: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China (PRC CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan (Attachment II). This checklist is dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

¹⁴ See Volume I of the Petition, at 8-10 and Exhibits I-3, I-5, and I-6; see also General Issues Supplement, at 5-8 and Exhibits I-Supp-1, I-Supp-2, I-Supp-3 and I-Supp-6.

¹⁵ See Volume I of the Petition, at Exhibits I-5 and I-6.

¹⁶ See PRC CVD Initiation Checklist, at Attachment II.

¹⁷ See Consultations Memorandum.

¹⁸ See Letter from Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., and Canadian Solar Inc., (January 15, 2014).

¹⁹ See Letter from Petitioner, (January 15, 2014).

Petitioner on January 17, 2014.²⁰ For further discussion of these comments, see the PRC CVD Initiation Checklist, at Attachment II.

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that Petitioner has met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²¹ Based on information provided in the Petition, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.²²

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department initiate.²³

Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must

²⁰ See Letter from Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., and Canadian Solar Inc., (January 17, 2014).

²¹ See CVD Initiation Checklist, at Attachment II.

²² Id.

²³ Id.

determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁴

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; shuttered production and hindered capacity utilization; reduced employment; and decline in industry financial performance.²⁵ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.²⁶

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The Department has examined the Petition on certain solar cells and panels from the PRC and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in

²⁴ See General Issues Supplement, at 8 and Exhibit I-Supp-4.

²⁵ See Volume I of the Petition, at 5-7, 20-22, 33-67 and Exhibits I-1, I-4, I-13 through I-14, I-16 through I-20, and I-22 through I-30; General Issues Supplement, at 8-9 and Exhibits I-Supp-1, I-Supp-4 and I-Supp-5; and Second General Issues Supplement, at 5-11 and Exhibits I-Supp-7 through I-Supp-15.

²⁶ See PRC CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan.

accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether producers/exporters of certain solar cells and panels in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see the CVD Initiation Checklist which accompanies this notice.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of 28 alleged programs. For the other five programs alleged by Petitioner, we have determined that the requirements for initiation have not been met. For a full discussion of the basis for our decision to initiate or not initiate on each program, see the CVD Initiation Checklist.

Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POI (i.e., calendar year 2012) under the following Harmonized Tariff Schedule of the United States numbers: 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of release of this data. We intend to make our decision regarding respondent selection within 20 days of publication of this Federal Register notice.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at <http://enforcement.trade.gov/apo/index.html>.

Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the GOC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of subsidized certain solar cells and panels from the PRC materially injure, or threaten material injury to, a U.S. industry.²⁷ A negative ITC determination will result in the investigation being terminated.²⁸ Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

On April 10, 2013, the Department published Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule, 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors

²⁷ See section 703(a)(2) of the Act.

²⁸ See section 703(a)(1) of the Act.

under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)-(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Please review the final rule, available at <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information in this investigation.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in AD and CVD proceedings.²⁹ The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under section 19 CFR 351.408(c), or to measure the adequacy of remuneration under section 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19

²⁹ See Extension of Time Limits: Final Rule, 78 FR 57790 (September 20, 2013).

CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the Extension of Time Limits; Final Rule, available at <http://www.gpo.gov//fdsys//pkg//FR-2013-09-20//html//2013-22853.htm>, prior to submitting factual information in this segment.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁰ Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD or CVD investigations or proceedings initiated on or after August 16, 2013, including this investigation.³¹ The formats for the revised certifications are provided at the end of the Final Rule. The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

³⁰ See section 782(b) of the Act.

³¹ See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings, 78 FR 42678 (July 17, 2013) (Final Rule).

This notice is issued and published pursuant to section 777(i) of the Act.

Paul Piquado
Assistant Secretary
for Enforcement & Compliance

January 22, 2014_
Date

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of this investigation, subject merchandise also includes modules, laminates and/or panels assembled in the subject country consisting of crystalline silicon photovoltaic cells that are completed or partially manufactured within a customs territory other than that subject country, using ingots that are manufactured in the subject country, wafers that are manufactured in the subject country, or cells where the manufacturing process begins in the subject country and is completed in a non-subject country.

Subject merchandise includes crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this investigation are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China. See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 77 FR 73018 (December 7, 2012); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order, 77 FR 73017 (December 7, 2012).

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

